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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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12 N.M., a minor, by and through  
13 Guardian Ad Litem STACIE MILLER,  
14 individually and as successor in  
interest to, ESTATE OF VINTON  
MILLER.

No. 2:25-cv-1389 WBS JDP

15 Plaintiffs,

MEMORANDUM AND ORDER RE:  
DEFENDANTS' MOTIONS TO  
DISMISS

16 || v.

17 PLACER COUNTY, a municipal  
corporation; THE PLACER COUNTY  
18 SHERIFF'S OFFICE, a public  
entity; PLACER COUNTY SHERIFF'S  
19 OFFICER DEPUTY CORONER ERIC  
HINTZE, individually; CALIFORNIA  
20 HIGHWAY PATROL, a public entity;  
CALIFORNIA HIGHWAY PATROL  
21 OFFICER CLAYTON GUILLEMIN,  
individually; CALIFORNIA STATE  
22 PARKS, a public entity;  
CALIFORNIA STATE PARKS OFFICER  
23 MATTHEW YARBROUGH, individually,  
EVAN MATSHES, individually; NAAG  
24 FORENSICS PC, an entity, and  
DOES 1 to 100, individually.

## Defendants.

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1 Plaintiff Stacie Miller ("plaintiff") brought this  
2 action against Placer County, the Placer County Sheriff's Office,  
3 (collectively, "Placer County entities"), Deputy Coroner Eric  
4 Hintze ("Hintze"), the California Highway Patrol ("CHP"), CHP  
5 Officer Clayton Guillemin ("Guillemin"), California State Parks &  
6 Recreation ("State Parks"), State Parks Officer Matthew Yarbrough  
7 ("Yarbrough"), and one-hundred (100) fictitiously named Doe  
8 defendants, in connection with the death of her spouse Vinton  
9 Miller ("decedent") on January 26, 2024. (See Compl. at 2-26  
10 (Docket No. 1).) With the exception of the Doe defendants, each  
11 remaining defendant (collectively, "defendants") now moves to  
12 dismiss all claims. (See Docket Nos. 19, 21-22, 31.)

13 I. Factual Background

14 The decedent lived in Placer County, worked at a ski  
15 resort known as Palisades Tahoe in Olympic Valley, and struggled  
16 "with mental health issues, including diagnosed schizophrenia."  
17 (See Compl. at 9.) On the morning of January 26, 2024, the  
18 decedent told plaintiff that he was leaving for work despite the  
19 fact that "he did not have to be at work" then. (See id. at 10-  
20 11.) Sometime later, plaintiff learned that the decedent "was  
21 driving to an unknown location in an unknown vehicle that was not  
22 his and told her that someone was trying to kill him." (See id.  
23 (citation modified).) She dialed 911 to inform law enforcement  
24 about the situation. (See id.)

25 After contacting the police, plaintiff spoke with the  
26 decedent once more to encourage him to go to the nearby Olympic  
27 Valley Events Center, which he agreed to do. (See id.) She then  
28 called law enforcement once again to provide an update on where

1 she thought her husband was headed. (See id.) Soon after, CHP  
2 officer Guillemin learned about the decedent driving "a white  
3 Ford F-150 truck northbound on Highway 89 in the North Lake Tahoe  
4 area, heading towards Olympic Valley in the County of Placer."  
5 (See id. at 11-12 (citation modified).)

6 One of the decedent's coworkers called law enforcement  
7 around the same time to notify them that he had taken a company  
8 vehicle which matched the F-150's profile and drove away in it.  
9 (See id. at 12.) Guillemin began his pursuit of the decedent and  
10 notified his dispatch "that he was going to make a stop on the  
11 truck." (See id. at 12-13.) After Guillemin lost track of the  
12 decedent, he began heading towards the decedent's workplace.  
13 (See id. at 13.)

14 Guillemin eventually approached the decedent's supposed  
15 destination and pulled over "onto the right shoulder at the  
16 intersection of Highway 89 and the entrance of Olympic Valley  
17 Events Center." (See id.) State Parks officer Yarbrough then  
18 appeared and stopped his vehicle next to Guillemin's own to  
19 discuss the situation. (See id.) While doing so, "the white  
20 truck with the Palisades Tahoe logo drove past the officers, on  
21 the right side of the road, heading towards Olympic Valley Events  
22 Center, which is a dead-end street." (See id. at 13-14 (citation  
23 modified).) Yarbrough "almost immediately took off at a high  
24 rate of speed after the white truck" without "activating his  
25 emergency sirens." (See id. at 14 (citation modified).)

26 While nearing the dead end, Yarbrough crashed his  
27 vehicle "into the driver's side of the white truck with the  
28 Palisades logo that the decedent was driving." (See id. at 14-

1 15.) As both vehicles' doors opened, Guillemin appeared at the  
2 scene in his own vehicle. (See id. at 15.) The decedent emerged  
3 from the white truck and approached Yarbrough in his vehicle.  
4 (See id. at 15-16.) The decedent turned around to flee, and then  
5 Yarbrough used a firearm against him. (See id. at 16.) The  
6 decedent was shot in the back and "immediately fell to the ground  
7 on his stomach, severely wounded." (See id. at 18.) Both  
8 officers shouted "drop the knife" to the decedent, which "was the  
9 first and only command they gave to him." (See id. (citation  
10 modified).)

11 Yarbrough and Guillemin "then pounced on the decedent  
12 and handcuffed him." (See id. at 18-19 (citation modified).) The officers claim that they began administering medical aid to  
13 the decedent after handcuffing him. (See id. at 18-19.) Neither  
14 Yarbrough nor Guillemin "called dispatch for additional medical  
15 aid for the decedent after he was shot. Instead, the decedent  
16 was assisted by Palisades Tahoe ski patrol paramedics." (See id.  
17 at 21.) Nobody ever took the decedent to a hospital, and "30 to  
18 40 minutes after he was shot," he was "pronounced dead" at the  
19 scene that morning. (See id. at 21, 26.)

21 On February 1, 2024, the decedent was autopsied at the  
22 direction of the Placer County entities, which concluded that a  
23 bullet had entered his "upper back" in an autopsy report. (See  
24 id. at 24.) On the death certificate, Hintze noted that the  
25 decedent's cause of death was a "gunshot wound of chest." (See  
26 id.)

27 II. Procedural Background

28 Plaintiff brings eleven claims against defendants: (1)

1 excessive force under 42 U.S.C. § 1983 against the CHP, Guillemin  
2 (collectively, "CHP defendants"), State Parks, and Yarbrough  
3 (collectively, "State Parks defendants"); (2) violation of the  
4 Tom Bane Civil Rights Act, Cal. Civ. Code § 52.1, against the  
5 Placer County entities, the CHP defendants, and the State Parks  
6 defendants; (3) negligence against the CHP defendants, the State  
7 Parks defendants, and the Placer County entities; (4) assault and  
8 battery against the CHP defendants, and the State Parks  
9 defendants; (5) violation of the American with Disabilities Act  
10 ("ADA") and the Rehabilitation Act ("RA"), 42 U.S.C. §§ 701,  
11 12101 against the Placer County entities, State Parks, and the  
12 CHP; (6) denial of medical care under 42 U.S.C. § 1983 against  
13 Yarbrough and Guillemin; (7) unwarranted interference with  
14 familial association under 42 U.S.C. § 1983 against the State  
15 Parks defendants, the CHP defendants, and the Placer County  
16 entities; (8) intentional infliction of emotional distress  
17 against the State Parks defendants, the CHP defendants, and the  
18 Placer County entities; (9) wrongful death, Cal. Civ. Proc. Code  
19 § 377.60, against the State Parks defendants, the CHP defendants,  
20 and the Placer County entities; (10) supervisory liability under  
21 42 U.S.C. § 1983 against State Parks, the CHP, and the Placer  
22 County entities; and (11) fraudulent misrepresentation against  
23 Hintze and the Placer County entities.<sup>1</sup> (See Compl. at 27-51.)

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25 <sup>1</sup> "Under California law, a cause of action is not lost by  
26 reason of a plaintiff's death." Wheeler v. City of Santa Clara,  
27 894 F.3d 1046, 1052-53 (9th Cir. 2018) (citing Cal. Civ. Proc.  
28 Code § 377.20). In such a case, "a survival action can be  
maintained by the decedent's 'personal representative' or  
'successor in interest.'" See id. (quoting Cal. Civ. Proc. Code  
§ 377.30). "'Successor in interest' is defined as the

1                   Defendants move to dismiss all claims under Federal  
2 Rule of Civil Procedure 12(b) (6) for "failure to state a claim  
3 upon which relief can be granted." See Fed. R. Civ. P.  
4 12(b) (6).<sup>2</sup>

5                   III. Discussion

6                   A. Eleventh Amendment

7                   In addition to moving to dismiss under Rule 12(b) (6),  
8 State Parks moves to dismiss under Rule 12(b) (1) for lack of  
9 subject-matter jurisdiction based on Eleventh Amendment immunity.  
10 (See Docket No. 22 at 11-15 (citing Fed. R. Civ. P. 12(b) (1))).  
11 Under separate cover, the CHP joined State Parks' motion in that  
12 respect. (See Docket No. 23 at 1-2.)

13                   Plaintiff concedes that the Eleventh Amendment  
14 insulates the CHP and State Parks from civil liability. (See,  
15 e.g., Docket No. 22 at 13-18, Docket No. 23 at 1-2.) "The  
16 Eleventh Amendment protects states and state instrumentalities  
17 from suit in federal court." See Doe v. Regents of the Univ. of  
18 Cal., 891 F.3d 1147, 1152-54 (9th Cir. 2018). It is undisputed  
19 that the CHP and State Parks are both "state instrumentalities."  
20 See id. Accordingly, the court will grant defendants' motions to  
21 dismiss this action in its entirety as against defendants CHP and

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22  
23 beneficiary of the decedent's estate or 'other successor in  
24 interest who succeeds to a cause of action.'" See id. (citation  
25 modified) (quoting Cal. Civ. Proc. Code § 377.11). Plaintiff  
attests that she is the decedent's successor in interest. (See  
Compl. at 3-4, 54.)

26                   <sup>2</sup> At the conclusion of oral argument on August 18, 2025,  
27 counsel for plaintiffs agreed to dismiss the claims of the  
28 decedent's minor child N.M. as well all claims as against Dr.  
Evan Matshes and his medical practice Naag Forensics PC.

1 State Parks.

2           B. Excessive Force Under 42 U.S.C. § 1983 (Count One)

3           Defendants move to dismiss plaintiff's claims for  
4 excessive force as against Yarbrough and Guillemin. (See Compl.  
5 at 27-28.)

6           To determine whether police officers' use of force was  
7 excessive, "our question is whether the officers employed an  
8 'objectively unreasonable' amount of force under the 'totality of  
9 the circumstances.'" See Estate of Strickland v. Nevada County,  
10 69 F.4th 614, 618-20 (9th Cir. 2023) (quoting Brooks v. Clark  
11 County, 828 F.3d 910, 919-20 (9th Cir. 2016)), cert. denied, 144  
12 S. Ct. 599, 599 (2024). As part of this inquiry, the court must  
13 consider factors such as "the nature and quality of the intrusion  
14 on the individual's Fourth Amendment interests against the  
15 countervailing governmental interests at stake." See id.  
16 (quoting Graham v. Connor, 490 U.S. 386, 396-97 (1989)). It must  
17 also assess "the type and amount of force inflicted, the severity  
18 of the crime at issue, whether the suspect posed an immediate  
19 threat to the safety of the officers or others, and whether the  
20 suspect was actively resisting arrest or attempting to evade  
21 arrest by flight." Id. (citation modified).

22           "Each government official is only liable for his or her  
23 own misconduct. It follows that liability may not be imposed on  
24 a team effort theory that would allow the jury to lump all the  
25 defendants together, rather than require it to base each  
26 individual's liability on his own conduct." See Peck v. Montoya,  
27 51 F.4th 877, 888-91 (9th Cir. 2022) (citation modified).  
28 "Instead, for an official to be liable for another actor's

1 depriving a third party of his constitutional rights, that  
2 official must have at least the same level of intent as would be  
3 required if the official were directly to deprive the third party  
4 of his constitutional rights." Id. (citation modified).

5 Plaintiff alleges that Yarbrough shot the decedent in  
6 the back while he faced away from the officer. (See Compl. at  
7 16-19, 21, 24.) Because decedent was not actively trying to  
8 escape from the scene or endanger anybody while walking away from  
9 Yarbrough, this allegation is sufficient to state a claim that  
10 Yarbrough used excessive force against the decedent. See Estate  
11 of Aguirre v. County of Riverside, 131 F.4th 702, 704-08 (9th  
12 Cir. 2025). Construing the allegations of the complaint in the  
13 light most favorable to plaintiff, it can be inferred that while  
14 the decedent had stolen a vehicle and evaded arrest prior to his  
15 face-to-face confrontation with Yarbrough, he posed no threat to  
16 the officers' safety in the moment with his back turned to them.  
17 (See Compl. at 16-19, 27-31.) Therefore, the defendants' motions  
18 to dismiss plaintiff's excessive force claim against Yarbrough in  
19 Count One will be denied.

20 Plaintiff also alleges that Guillemin used excessive  
21 force against the decedent. (See id.) Unlike Yarbrough,  
22 Guillemin did not shoot or attempt to shoot the decedent, so it  
23 cannot be reasonably inferred that Guillemin had the same level  
24 of intent that Yarbrough did. See Peck, 51 F.4th at 888-91. The  
25 complaint alleges only that Guillemin helped handcuff the  
26 decedent after Yarbrough shot the decedent in the back. Another  
27 judge of this court has previously recognized that "the use of  
28 handcuffs during an arrest is quite common and often a standard

1 practice and, ordinarily, the use of handcuffs during an arrest  
 2 is a very low quantum of force that will not constitute excessive  
 3 force." See Knickerbocker v. United States, No. 1:16-cv-1811 DAD  
 4 JLT, 2020 WL 1433141, at \*4-5 (E.D. Cal. Mar. 24, 2020), aff'd,  
 5 858 F. App'x 243, 244 (9th Cir. 2021).

6 However, the court has acknowledged that "the manner in  
 7 which an individual is handcuffed may, under some circumstances,  
 8 amount to excessive force," such as if the handcuffs are too  
 9 tight. Id. (citing Wall v. County of Orange, 364 F.3d 1107,  
 10 1111-12 (9th Cir. 2004)); see also Spencer v. Pew, 117 F.4th  
 11 1130, 1137-45 (9th Cir. 2024) (holding that police officers who  
 12 used a Taser repeatedly on the plaintiff, beat him repeatedly,  
 13 and then handcuffed him did not use excessive force until an  
 14 officer started "kneeling on the plaintiff after he was  
 15 handcuffed"). But no such facts are alleged here. (See Compl.  
 16 at 19, 27-28.) To state a claim for excessive force against  
 17 Guillemin, plaintiff would need to allege that Guillemin used  
 18 additional force against the decedent beyond just assisting in  
 19 handcuffing him. (See id.) Thus, the court will grant  
 20 defendants' motions to dismiss plaintiff's excessive force claim  
 21 against Guillemin in Count One.

22 C. Denial of Medical Care (Count Six)

23 Defendants move to dismiss plaintiff's claims for  
 24 unconstitutional denial of medical care against Yarbrough and  
 25 Guillemin under the Fourth Amendment. (See Compl. at 39-40  
 26 (citing 42 U.S.C. § 1983).)

27 The Fourth Amendment requires "'objectively reasonable  
 28 post-arrest care,' which means that police officers must seek

1 'the necessary medical attention for a detainee when he has been  
2 injured while being apprehended by either promptly summoning the  
3 necessary medical help or by taking the injured detainee to a  
4 hospital.'" See D'Braunstein v. Cal. Highway Patrol, 131 F.4th  
5 764, 769-70 (9th Cir. 2025) (quoting Tatum v. City & County of  
6 San Francisco, 441 F.3d 1090, 1098-1100 (9th Cir. 2006)). This  
7 rule "does not 'require an officer to provide what hindsight  
8 reveals to be the most effective medical care for an arrested  
9 suspect.'" Id.

10 Plaintiff alleges that Yarbrough and Guillemin failed  
11 to provide the decedent with sufficient medical care after he was  
12 shot in the back and handcuffed on the ground. (See Compl. at  
13 18-21, 39-40.) Specifically, the complaint states that Yarbrough  
14 and Guillemin attempted to "administer medical aid to the  
15 decedent," but neither officer "called dispatch for additional  
16 medical aid." (See id. at 19-21.) Because neither officer  
17 "summoned medical help or took the injured arrestee to a  
18 hospital," plaintiff states a claim for denial of medical care  
19 against Yarbrough and Guillemin. See Holcomb v. Ramar, No. 1:13-  
20 cv-1102 AWI SKO, 2013 WL 5947621, at \*3-4 (E.D. Cal. Nov. 4,  
21 2013); see also Estate of F.R. v. County of Yuba, No. 2:23-cv-  
22 846, 2023 WL 6130049, at \*3-4 (E.D. Cal. Sept. 19, 2023) (denying  
23 police officer's motion to dismiss where plaintiffs alleged that  
24 the officer prevented the decedent there from receiving medical  
25 aid after a third party shot him). Accordingly, the court will  
26 deny defendants' motions to dismiss plaintiff's denial of medical  
27 care claims against Yarbrough and Guillemin in Count Six.

28 D. Interference with Familial Relations in Violation of 42

1                   U.S.C. § 1983 (Count Seven)

2                   Defendants move to dismiss plaintiff's claims for  
 3 unwarranted interference with familial relations under the First  
 4 Amendment against Yarbrough, Guillemin, and the Placer County  
 5 entities.<sup>3</sup> (See Compl. at 40-41.)

6                   The Ninth Circuit has repeatedly dodged the question of

7 whether a widow may assert a § 1983 claim for unwarranted

8 interference with familial association for loss of her spouse.

9 See, e.g., Peck, 51 F.4th at 892-94 ("This case involves a  
 10 familial-association claim asserted by a spouse, rather than a  
 11 parent or child. We have not previously held whether a

12 substantive due process right exists in that context, and other  
 13 courts of appeals have reached conflicting conclusions.");

14 Hampton v. California, No. 22-15481, 2023 WL 6443897, at \*1 (9th  
 15 Cir. Oct. 3, 2023) (same), cert. denied sub nom. Diaz v. Polanco,  
 16 144 S. Ct. 2520 (2024); Estate of Elkins v. Pelayo, No. 22-16027,  
 17 2023 WL 9020556, at \*2-3 & n.4 (9th Cir. Dec. 29, 2023) (citation  
 18 modified) ("This court has not established whether spouses may  
 19 bring a loss of companionship claim under the Fourteenth  
 20 Amendment.").

21                   Similar claims have had mixed results in other courts.

22 In Griffin v. Strong, the Tenth Circuit considered a spousal

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23                   <sup>3</sup> Courts disagree on whether the First Amendment or the  
 24 Fourteenth Amendment protects familial relations. See Estate of  
Chivrell v. City of Arcata (Chivrell I), 623 F. Supp. 3d 1032,  
 25 1043-45 & n.6 (N.D. Cal. 2022) (citing IDK, Inc. v. Clark County,  
 26 836 F.2d 1185, 1191-93 (9th Cir. 1988)). However, courts treat  
 27 "the liability analysis of a familial association claim brought  
 28 under the First Amendment as the same as for a familial  
 association claim brought under the Fourteenth Amendment." See  
id. (citation modified).

1 claim for unwarranted interference with familial relations and  
2 reversed a judgment against a defendant police officer on that  
3 claim. See 983 F.2d 1544, 1546-49 (10th Cir. 1993). In Harbury  
4 v. Deutch, the D.C. Circuit affirmed as a matter of law the  
5 dismissal of a spousal claim for unwarranted interference with  
6 familial association. See 233 F.3d 596, 604-07 (D.C. Cir. 2000).  
7 However, the Supreme Court overruled its decision on other  
8 grounds in Christopher v. Harbury, 536 U.S. 403, 405-06, 421-22  
9 (2002).

10 As the Ninth Circuit did in Peck, this court will  
11 assume that plaintiff's claim is cognizable and address whether  
12 her allegations satisfy its elements, instead of deciding a  
13 constitutional question on motions to dismiss under Rule  
14 12(b) (6). See 51 F.4th at 892-94.

15 To state a claim for unwarranted interference with  
16 familial relations, the complaint must contain more than  
17 "conclusory statements that do not allow the court to draw a  
18 reasonable inference that plaintiff had the deep attachments and  
19 commitments with the decedent required to merit such  
20 constitutional protections." See Chivrell I, 623 F. Supp. 3d at  
21 1044-45 (citing IDK, 836 F.2d at 1192-93).

22 Plaintiff pleads that she was intimately involved in  
23 the decedent's life. (See Compl. at 3-4, 9-11.) The complaint  
24 indicates that she lived with him, bore a child with him, was  
25 involved in his day-to-day life (by, *inter alia*, being aware of  
26 his work schedule and routines), and looked out for his safety.  
27 (See id.) The complaint goes beyond "merely labelling the  
28 decedent as plaintiff's spouse," and therefore plaintiff has

1 sufficiently alleged an underlying intimate relationship. See  
2 Chivrell I, 623 F. Supp. 3d at 1044-45 (citation modified).

3                   However, plaintiff must also allege that "the officers'  
4 conduct deprived plaintiff of her familial interest in a manner  
5 that shocks the conscience." See Peck, 51 F.4th at 892-94  
6 (citation modified). The Ninth Circuit applies a "deliberate-  
7 indifference standard when officials had ample time to correct  
8 their wrongful conduct. But if the defendants had to make a snap  
9 judgment because of an escalating situation, then their conduct  
10 does not shock the conscience unless they acted with a purpose to  
11 harm unrelated to legitimate law enforcement objectives." Id.  
12 (citation modified).

13                   Plaintiff's allegations of the officers' misconduct can  
14 be divided into at least three sets of acts: Yarbrough crashing  
15 his car into the decedent's vehicle, Yarbrough shooting the  
16 decedent in the back, and both officers failing to find adequate  
17 medical care for the decedent after he was shot. (See Compl. at  
18 15-21.)

19                   Plaintiff alleges that the officers had "30 to 40  
20 minutes after he was shot" to connect the decedent with adequate  
21 medical care. (See id. at 21-26.) Plaintiff thus states a claim  
22 based on the third set of acts because "actual deliberation was  
23 practical" under these circumstances. See Porter v. Osborn, 546  
24 F.3d 1131, 1137-38 (9th Cir. 2008) (citation modified) (quoting  
25 County of Sacramento v. Lewis, 523 U.S. 833, 850-51 (1998)). At  
26 the point that Yarbrough and Guillemin had handcuffed the  
27 decedent and left him lying on the ground for 30 minutes, "an  
28 escalating situation" was no longer present, and the officers had

1 "ample time to correct their wrongful conduct." See Peck, 51  
2 F.4th at 892-94; see also Corbera v. Taylor, No. 2:21-cv-1998 WBS  
3 KJN, 2022 WL 17741089, at \*4-6 (E.D. Cal. Dec. 16, 2022) (denying  
4 officer's motion to dismiss familial association claim under  
5 deliberate indifference standard where officer had "approximately  
6 seven minutes between the time the officer agreed to respond to  
7 the call and the time of his collision with the decedent's  
8 vehicle, which tends to show that he had sufficient time to  
9 deliberate on his actions"). Because plaintiff sufficiently  
10 alleges that the officers' conduct shocks the conscience, the  
11 court need not address whether the other allegations state a  
12 familial association claim.

13 Therefore, the court will deny defendants' motions to  
14 dismiss plaintiff's unwarranted interference with familial  
15 relations claims against Yarbrough and Guillemin in Count Seven.

16 E. Tom Bane Act (Count Two)

17 Defendants move to dismiss plaintiff's claims for  
18 violation of the Tom Bane Act against Yarbrough, Guillemin, and  
19 the Placer County entities. (See Compl. at 28-31 (citing Cal.  
20 Civ. Code § 52.1).)

21 "The Tom Bane Act provides a cause of action for  
22 violations of a plaintiff's state or federal civil rights  
23 committed by threats, intimidation, or coercion." Reese v.  
24 County of Sacramento, 888 F.3d 1030, 1040-41 & n.2 (9th Cir.  
25 2018) (citation modified) (citing Cal. Civ. Code § 52.1). "The  
26 elements of an excessive force claim under the Tom Bane Act are  
27 the same as under 42 U.S.C. § 1983." Id. (citation modified).

28 Because plaintiff has stated a claim that Yarbrough

1 violated the Fourth Amendment in using excessive force against  
 2 the decedent, she also states a claim against him under the Tom  
 3 Bane Act. See Rivera v. Cater, No. 2:18-cv-56 WBS EFB, 2018 WL  
 4 1621095, at \*3-4 (E.D. Cal. Apr. 4, 2018). The complaint also  
 5 states a claim for violation of the Tom Bane Act against  
 6 Guillemin. (See Compl. at 28-31, 40-41.) Plaintiff premises  
 7 this claim against him upon unwarranted interference with  
 8 familial associations. (See id.) Therefore, the court will deny  
 9 defendants' motions to dismiss plaintiff's claim under the Tom  
 10 Bane Act against Yarbrough and Guillemin in Count Two.

11       F. Negligence (Count Three)

12           Defendants move to dismiss plaintiff's claims for  
 13 negligence against the State Parks defendants and the CHP  
 14 defendants. (See Compl. at 31-33.)

15           "Under California negligence law, 'a plaintiff must  
 16 show that the defendant had a duty to use due care, that he  
 17 breached that duty, and that the breach was the proximate or  
 18 legal cause of the resulting injury.'" Tabares v. City of  
 19 Huntington Beach, 988 F.3d 1119, 1125-26 (9th Cir. 2021) (quoting  
 20 Hayes v. County of San Diego, 57 Cal. 4th 622, 628-33 (2013)).

21           "The officer's conduct must only 'fall within the range  
 22 of conduct that is reasonable' viewed 'in light of the totality  
 23 of circumstances.'" Id. (citation modified). "California  
 24 negligence law regarding the use of deadly force overall is  
 25 'broader than federal Fourth Amendment law.'" Id. (quoting  
 26 Villegas ex rel. C.V. v. City of Anaheim, 823 F.3d 1252, 1257-58  
 27 & n.6 (9th Cir. 2016)).

28           Because plaintiff states a claim for excessive force

1 against Yarbrough, she states a claim for negligence against him.  
2 (See Compl. at 15, 31-33.) The Ninth Circuit's holding in  
3 Tabares that California negligence law is broader than what the  
4 Fourth Amendment circumscribes means that police conduct which  
5 runs afoul of the Fourth Amendment is also unreasonable. See 988  
6 F.3d at 1125-26. However, the converse is not true: a police  
7 officer's negligent conduct does not necessarily violate the  
8 Fourth Amendment. See Alves v. County of Riverside, 135 F.4th  
9 1161, 1171-74 (9th Cir. 2025). Thus, the court will deny  
10 defendants' motions to dismiss plaintiff's negligence claim  
11 against Yarbrough in Count Three.

12 The complaint also states a claim for negligence  
13 against Guillemin. (See Compl. at 21, 31-33, 39-40.) It alleges  
14 that Guillemin owed the decedent a duty of due care, which he  
15 breached by not calling for the decedent to receive medical  
16 attention, after restraining the decedent. See Estate of F.R.,  
17 2023 WL 6130049, at \*3-4 (citation omitted) ("Plaintiffs allege  
18 that F.R. was in custody and in need of urgent medical attention.  
19 The court therefore concludes that plaintiffs have sufficiently  
20 alleged that defendants owed F.R. a duty of care."); see also  
21 Alves, 135 F.4th at 1171-74 (citation modified) ("The officers  
22 owed the decedent a duty of due care after restraining him in  
23 handcuffs and breached their duty of care by not placing him in a  
24 recovery position and failing to check whether he was breathing  
25 and had a pulse."). Accordingly, the court will deny defendants'  
26 motions to dismiss plaintiff's negligence claim against Guillemin  
27 in Count Three.

28 G. Battery (Count Four)

1                   Under California law, a plaintiff bringing a battery  
2 claim against a police officer must show that the officer used  
3 "unreasonable force." See Monzon v. City of Murrieta, 978 F.3d  
4 1150, 1164-65 (9th Cir. 2020) (quoting Edson v. City of Anaheim,  
5 63 Cal. App. 4th 1269, 1272-73 (4th Dist. 1998)). "This analysis  
6 requires the same 'totality of the circumstances' inquiry applied  
7 to negligence claims." McLeod v. City of Redding, No. 2:22-cv-  
8 585 WBS JDP, 2024 WL 3011227, at \*7-8 (E.D. Cal. June 12, 2024)  
9 (citation modified) (quoting Hayes, 57 Cal. 4th at 639-40).

10                  Because plaintiff pleads that Yarbrough's use of force  
11 against the decedent was unreasonable, she also states a claim  
12 for battery against him. (See Compl. at 27-34.) The same  
13 reasoning applies to plaintiff's allegation that Guillemin used  
14 unreasonable force against the decedent. See id. While  
15 Guillemin did not shoot the decedent, the complaint alleges that  
16 he negligently assisted Yarbrough in handcuffing the decedent  
17 after he had fallen to the ground wounded. See id. Thus, the  
18 court will deny defendants' motions to dismiss plaintiff's  
19 battery claims against Yarbrough and Guillemin in Count Four.

20                  H. Intentional Infliction of Emotional Distress (Count  
21 Eight)

22                  Defendants move to dismiss plaintiff's claims for  
23 intentional infliction of emotional distress against Yarbrough,  
24 Guillemin, and the Placer County Entities. (See Compl. at 42-  
25 43.) To state a claim for intentional infliction of emotional  
26 distress, plaintiff must show "extreme and outrageous conduct by  
27 the defendant with the intention of causing, or reckless

1 disregard of the probability of causing, emotional distress;  
2 plaintiff's suffering severe or extreme emotional distress; and  
3 actual and proximate causation of the emotional distress by the  
4 defendant's outrageous conduct." See Catsouras v. Dep't of Cal.  
5 Highway Patrol, 181 Cal. App. 4th 856, 874-75 (4th Dist. 2010)  
6 (citation modified) (quoting Christensen v. Superior Ct., 54 Cal.  
7 3d 868, 902-04 (1991)).

8 "Conduct to be outrageous must be so extreme as to  
9 exceed all bounds of that usually tolerated in a civilized  
10 community." Id. Further, "it is not enough that the conduct be  
11 intentional and outrageous. It must be conduct directed at the  
12 plaintiff or occur in the presence of a plaintiff of whom the  
13 defendant is aware." Id. (citation modified).

14 The court concludes that plaintiff has sufficiently  
15 stated claims for intentional infliction of emotional distress  
16 against Yarbrough and Guillemin in Count Eight of the complaint.  
17 (See Compl. at 42-43.) Plaintiff alleges that Yarbrough and  
18 Guillemin "engaged in extreme conduct, with reckless disregard of  
19 the probability that the decedent would suffer emotional distress  
20 and did suffer severe emotional distress pre-mortem." (See id.  
21 (citation modified).)

22 In Estate of F.R., this court denied a police officer's  
23 motion to dismiss a claim for intentional infliction of emotional  
24 distress where the defendant prevented the decedent from  
25 receiving medical attention for an ultimately fatal gunshot  
26 wound. See 2023 WL 6130049, at \*8-9. The court will do the same  
27 here because the officers' seizure of the decedent prevented him  
28 from receiving medical attention and they failed to summon

1 medical attention for an extended period of time. See id.  
2 ("Whether defendants' conduct was sufficiently 'outrageous' to  
3 support a claim for intentional infliction of emotional distress  
4 is a question of fact, and therefore inappropriate for resolution  
5 at the motion to dismiss stage."). Thus, the court will deny  
6 defendants' motions to dismiss plaintiff's intentional infliction  
7 of emotional distress claims against Yarbrough and Guillemin in  
8 Count Eight.

9 I. Wrongful Death (Count Nine)

10 "A family member may bring a state law wrongful death  
11 claim to recover damages based on her own injuries resulting from  
12 a decedent's death. A plaintiff who brings a wrongful death  
13 claim must plead and prove standing." Chivrell I, 623 F. Supp.  
14 3d at 1045-46 (citation modified) (citing Cal. Civ. Proc. Code  
15 § 377.60). Here, plaintiff states that she was "the decedent's  
16 spouse, and his successor in interest and succeeds to the  
17 decedent's interest in this action." (See Compl. at 54 (citation  
18 modified) (citing Cal. Civ. Proc. Code § 377.11).) The complaint  
19 also states the manner in which defendant was negligent and how  
20 such negligence caused or contributed to any specified injury.  
21 See Estate of Chivrell v. City of Arcata (Chivrell II), 694 F.  
22 Supp. 3d 1218, 1240-41 (N.D. Cal. 2023) (citing Norgart v. Upjohn  
23 Co., 21 Cal. 4th 383, 389-91 (1999)). Further, Yarbrough's use  
24 of excessive force and Guillemin's denial of medical care would  
25 each suffice to meet the wrongful act or neglect element of a  
26 wrongful death claim. (See Compl. at 27-34, 39-40, 43-45.)  
27 Accordingly, the complaint sufficiently alleges a wrongful death  
28 claim against Yarbrough and Guillemin.

1                   J. Fraudulent Misrepresentation (Count Eleven)

2                   Defendants move to dismiss plaintiff's claims for  
3 fraudulent misrepresentation against Hintze and the Placer County  
4 entities. (See Compl. at 49-50.) The elements of fraudulent  
5 misrepresentation are: "defendants represented that an important  
6 fact was true; that representation was false; defendants knew  
7 that the representation was false when defendants made it, or  
8 defendants made the representation recklessly and without regard  
9 for its truth; and defendants intended that plaintiff rely on the  
10 representation." See Thomas v. Regents of the Univ. of Cal., 97  
11 Cal. App. 5th 587, 637-38 (1st Dist. 2023) (citation modified).  
12 Plaintiff must also show that she "reasonably relied on the  
13 representation," the misrepresentation "harmed" her, and that her  
14 "reliance on defendant's representation was a substantial factor  
15 in causing that harm." Id. (citation modified).

16                   Plaintiff seeks to impose fraud liability on Hintze and  
17 the Placer County entities because the decedent's death  
18 certificate states that he died of "a gunshot wound to the chest"  
19 when the decedent was shot in the back. (See Compl. at 23-24,  
20 49-50.) Plaintiff does not cite any authority for the  
21 proposition that the wording of the decedent's death certificate  
22 is grounds for such a claim. (See, e.g., Docket No. 41 at 4-8.)

23                   Because she does not allege that any representation  
24 defendants made to this effect was false, plaintiff fails to  
25 state a claim for fraudulent misrepresentation. (See Compl. at  
26 24, 49-51.) Further, plaintiff does not indicate that she  
27 reasonably relied on the Hintze's wording in the autopsy report  
28

1 or on the death certificate.<sup>4</sup> (See id.) Thus, the court finds  
2 plaintiff's fraudulent misrepresentation claims in Count Eleven  
3 to be frivolous at best, and will grant defendants' motions to  
4 dismiss those claims.

5 K. Municipal Liability (Count Ten)

6 The Placer County entities move to dismiss all claims  
7 against them. (See Compl. at 28-33, 34-38, 40-51.)

8 "In California, a public entity is not liable for an  
9 injury arising from an act or omission of the public entity or a  
10 public employee except as provided by statute." Doe v. L.A.  
11 Cnty. Dep't of Child. & Fam. Servs., 37 Cal. App. 5th 675, 686-87  
12 (2d Dist. 2019) (citing Cal. Gov't Code § 815(a)). However, "a  
13 public entity is liable for injury proximately caused by an act  
14 or omission of an employee of the public entity within the scope  
15 of his employment if the act or omission would have given rise to  
16 a cause of action against that employee or his personal  
17 representative."<sup>5</sup> See Cal. Gov't Code § 815.2(a) (citation  
18 modified).

19 Plaintiff concedes that the Placer County entities are  
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21 <sup>4</sup> At oral argument, plaintiffs' counsel was not able to  
22 explain how her client relied at all on the language of the death  
certificate or in the autopsy report.

23 <sup>5</sup> Plaintiff brings claims against Doe 1, "a dispatcher  
24 for the Placer County Sheriff's Office who communicated messages  
25 to law enforcement agents during the incident giving rise to this  
action at all material times." (See Compl. at 6, 28-34, 39-45  
(citation modified).) Because Doe 1 has not moved to dismiss,  
plaintiff's claims against Doe 1 and any potential vicarious  
liability that may attach to the Placer County entities as a  
result are not in front of the court at this time. (See Docket  
No. 39 at 8.) Therefore, the court declines to decide whether  
plaintiff states claims against Doe 1.

1 public entities. (See Compl. at 4-5 (citing Cal. Gov't Code  
 2 § 811.2).) Because plaintiff does not state a claim against any  
 3 of the Placer County entities' employees, such as Hintze,  
 4 plaintiff does not state a tort claim against the Placer County  
 5 entities either. See Cal. Gov't Code §§ 815, 815.2(a), 815.4.  
 6 Therefore, the court will grant defendants' motions to dismiss  
 7 plaintiff's claims against the Placer County entities in Counts  
 8 Two, Three, Five, Eight, Nine, and Eleven.<sup>6</sup>

9 Plaintiff's claims against the Placer County entities  
 10 under 42 U.S.C. § 1983 in Counts Seven and Ten similarly fail.  
 11 (See Compl. at 40-41, 45-48.) "Because § 1983 imposes liability  
 12 only where a state actor, 'under color of some official policy,  
 13 'causes' an employee to violate another's constitutional rights,'  
 14 Congress did not intend to impose vicarious liability on  
 15 municipalities 'solely on the basis of the existence of an  
 16 employer-employee relationship with a tortfeasor.'" Colorado  
 17 City, 935 F.3d at 808-09 (quoting Monell v. Dep't of Soc. Servs.  
 18 of N.Y.C., 436 U.S. 658, 690-95 (1978)). "Moreover, Congress did  
 19 not intend municipalities to be held liable unless action  
 20 pursuant to official municipal policy of some nature caused a  
 21 constitutional tort." Id. (citation modified). "Instead, to  
 22 establish municipal liability, a plaintiff must show that a local  
 23 government's policy or custom led to the plaintiff's injury."  
 24 Id. (citation modified).

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 26         <sup>6</sup> Count Five for violations of the ADA and RA is a  
 27 federal claim, but state law mirrors federal law in terms of  
 28 municipal and vicarious liability for purposes of this claim.  
See United States v. Town of Colorado City, 935 F.3d 804, 808-09  
 (9th Cir. 2019).

1 Plaintiff fails to state a claim under 42 U.S.C. § 1983  
 2 against either of the Placer County entities because she does not  
 3 identify a specific "policy or custom" upon which an agent of the  
 4 Placer County entities acted. See T.O. ex rel. Morris v. County  
 5 of Nevada, No. 2:24-cv-1131, 2024 WL 4216754, at \*1-2 (E.D. Cal.  
 6 Sept. 17, 2024) (citation modified) (citing Monell, 436 U.S. at  
 7 691-95 (1978)). Accordingly, the court will grant defendants'  
 8 motions to dismiss plaintiff's claims under 42 U.S.C. § 1983  
 9 against the Placer County entities in Counts Seven and Ten.<sup>7</sup>

10 L. Qualified Immunity

11 In the current preliminary posture, the court declines  
 12 to address whether qualified immunity shields any defendants from  
 13 liability. See Keates v. Koile, 883 F.3d 1228, 1234-35 (9th Cir.  
 14 2018). "While courts are permitted to consider qualified  
 15 immunity at the pleadings stage, the Ninth Circuit has explained  
 16 that doing so 'raises special problems for legal decision  
 17 making.'" Jones v. City of Vallejo, No. 2:22-cv-1574 WBS JDP,  
 18 2024 WL 2153646, at \*3-4 (E.D. Cal. May 14, 2024) (quoting  
 19 Keates, 883 F.3d at 1234-35).

20 "By considering qualified immunity at the pleadings  
 21 stage, the courts may be called upon to decide far-reaching  
 22 constitutional questions on a nonexistent factual record." Id.  
 23 (citation modified). "At this stage, if the operative complaint

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 25 <sup>7</sup> In the alternative, the court construes plaintiff's  
 26 untimely response to Hintze and the Placer County Entities'  
 27 motion to dismiss as a non-opposition to it. See L.R. 230(c).  
 28 They moved to dismiss on June 23, 2025. (See Docket No. 21.)  
 The parties stipulated to giving plaintiff until July 28, 2025 to  
 oppose the motion. (See Docket No. 33.) Plaintiff did not do so  
 until August 4, 2025. (See Docket No. 41.)

1 contains even one allegation of a harmful act that would  
 2 constitute a violation of a clearly established constitutional  
 3 right, then plaintiff is entitled to go forward with her claims.”  
 4 Id. (citation modified).

5 As discussed above, plaintiff pleads facts which make  
 6 it “possible that defendants violated a clearly established  
 7 right” under the Fourth Amendment, such as Yarbrough’s alleged  
 8 use of excessive force. See id. (citation modified). “Denial of  
 9 qualified immunity at this juncture therefore sheds little light  
 10 on whether defendants might ultimately be entitled to qualified  
 11 immunity once the case proceeds at least to the summary judgment  
 12 stage, where the court is presented with facts providing context  
 13 for the challenged actions.” Id. (citation modified). Thus, the  
 14 court will deny defendants’ motions to dismiss for qualified  
 15 immunity at this stage of the proceeding.<sup>8</sup>

16 M. Leave to Amend

17 Defendants request that the court dismiss plaintiff’s  
 18 claims with prejudice and without leave to amend. (See, e.g.,  
 19 Docket No. 22 at 15-16, 26-27.) However, “Federal Rule of Civil  
 20 Procedure 15(a)(2) provides that the court should ‘freely give  
 21 leave when justice so requires.’” Herring Networks, Inc. v.  
 22 Maddow, 8 F.4th 1148, 1160-61 (9th Cir. 2021) (quoting Fed. R.

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23 <sup>8</sup> For a similar reason, the court does not reach  
 24 defendants’ arguments that plaintiff’s claims should be dismissed  
 25 because she did not timely comply with the California Government  
 26 Claims Act to avoid using “extrinsic evidence.” See Wilson v.  
Timec Servs. Co., No. 2:23-cv-172 WBS KJN, 2023 WL 5753617, at  
 27 \*1-2 & n.2 (E.D. Cal. Sept. 6, 2023) (citing Fed. R. Civ. P. 12).  
 28 Such defenses are better suited for adjudication on a motion for  
 summary judgment. See id. Accordingly, the CHP defendants’  
 request for judicial notice is DENIED. (See Docket No. 19-6.)

1 Civ. P. 15(a)(2)). "This policy is to be applied with extreme  
2 liberality.'" Id. (citation modified). Given that some of the  
3 described pleading defects may be curable, the court will grant  
4 plaintiff leave to amend the complaint.

5 IT IS THEREFORE ORDERED that all claims by or on behalf  
6 of plaintiff N.M., and all claims as against defendants Dr. Evan  
7 Matshes and Naag Forensics PC be, and the same hereby are,  
8 DISMISSED with prejudice;

9 IT IS FURTHER ORDERED that Count One of the complaint  
10 be, and the same hereby is, DISMISSED without prejudice as  
11 against defendants Guillemin, State Parks, and the CHP; Count Two  
12 is DISMISSED without prejudice as against defendants Placer  
13 County, the Placer County Sheriff's Office, and the CHP; Counts  
14 Three, Seven, and Nine are DISMISSED without prejudice as against  
15 defendants State Parks, the CHP, Placer County, and the Placer  
16 County Sheriff's Office; Count Four is DISMISSED without  
17 prejudice as against defendants State Parks and the CHP; and  
18 Counts Five, Ten, and Eleven are DISMISSED without prejudice as  
19 against all defendants; Count Eight is DISMISSED without  
20 prejudice as against defendants State Parks, Placer County, and  
21 the Placer County Sheriff's Office;

22 AND IT IS FURTHER ORDERED that defendants' motions to  
23 dismiss be, and the same hereby are, DENIED in all other  
24 respects.<sup>9</sup>

25 Plaintiff has twenty-one (21) days from the date of  
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27 <sup>9</sup> In other words, the sole remaining claims are Count One  
28 against Yarbrough, and Counts Two, Three, Four, Six, Seven, Eight  
and Nine against both Yarbrough and Guillemin.

1 this Order to file an amended complaint if she can do so  
2 consistent with this Order.

3 Dated: August 22, 2025



4 **WILLIAM B. SHUBB**  
5 **UNITED STATES DISTRICT JUDGE**

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